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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6683 of 1988

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMI RASIKLAL SONPAL (MINOR) THRO GUARDIAN R C SONPAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6683 of 1988

MR SV RAJU for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

and

MR.JUSTICE K.A.PUJ

Date of decision: 04/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

The present petition is filed challenging the vires of the provisions of Articles 10 and 11 of Schedule-I of the Bombay Court Fees Act, 1959 on the ground that the said provisions are arbitrary, capricious and violative of the provisions contained in Article 14 of the Constitution of India. The petitioner has also prayed for stay against the implementation and operation of the orders dated 11.1.1988 and 20.9.1988 at Annexures A & C respectively to the petition directing the petitioner to pay Court Fees of Rs. 67,212.50 ps.

2. The case of the petitioner is that the petitioner had filed a petition being Civil Misc. Application No. 914 of 1987 before the City Civil Court at Ahmedabad praying for Succession Certificate in respect of certain debts, securities etc., belonging to the deceased, namely Shri Natwarlal Chunilal Sonpal, brother of the petitioner. The deceased expired at Nashik on or about 6th August 1987 leaving behind a Will dated 12-10-1986 wherein he bequeathed all his debts, securities and other properties to Ami, minor daughter of Rasiklal Chunilal Sonpal who was appointed as guardian of minor Ami and has been empowered to manage the affairs of the said properties. Accordingly, the petitioner had applied for Succession Certificate in respect of the properties belonging to the deceased as guardian of minor Ami. The said estate in respect of which the Succession Certificate was sought for was valued at Rs. 9,02,000/-. The City Civil Court at Ahmedabad passed an order on 11-1-1988 directing the applicant to deposit the amount of Rs. 67,212-50 towards the Court Fees on the said application for Letter of Probate/Succession Certificate. The petitioner had, therefore, sought for time and ultimately the City Civil Court had passed an order on 20-9-1988 giving last chance to the petitioner to deposit the Court Fees on or before 30-9-1988. The petitioner had made it clear before the City Civil Court at Ahmedabad that he wanted to challenge the vires of the provisions of the said Act before this Court.

3. Heard Mr. Chetan Pandya, for Mr. SV Raju, learned advocate appearing for the petitioner. He has submitted that the issue raised in the present petition is squarely covered by the decision of the Hon'ble Supreme Court in the case of State of Maharashtra vs. Mrs. Jyoti Nikul Jariwala and Others - 1989 Supp.(1) SCC Page 698, wherein it is held:

"The levy of court fee on proceedings for grant of probate and letters of administration ad valorem without the upper limit prescribed for all other litigants - the court fee in the present case amounting to Rs. 6,14,814 - is discriminatory. There is no intelligible or rational differentia between the two classes of litigations and having regard to the fact that what is recovered is a fee, the purported classification has no rational nexus to the object. Where a proceeding for grant of probate and letters of administration becomes a contentious matter, it is registered as a suit and proceeded with accordingly. If in respect of all other suits of whatever nature and complexity an upper limit of Rs. 15,000 on the court fee is fixed, there is no logical justification for singling out this proceeding for an ad valorem impost without the benefit of some upper limit prescribed by the same statute respecting all other litigants. The impost was never sought to be supported or justified as something other than a mere fee, levy of which is otherwise within the State's power or as separate 'fee' for another distinct source. It is purported to be collected and sought to be justified only as court fee and nothing else. The High Court was, therefore, justified in striking down the impugned provisions as being violative of Article 14."

Respectfully following the aforesaid decision of the Supreme Court, we are of the view that the City Civil Court was not justified in passing the order dated 11.1.1988 directing the petitioner to pay the Court Fees of Rs. 67,212.50. The petitioner was required to pay the Court Fees at the appropriate rate which was applicable to the person who files the suit before the Civil Court. In any case, it should not exceed the amount of Rs. 15,000 which was the maximum ceiling prescribed under the Act. The City Civil Court is, therefore, directed to entertain the petition filed by the petitioner for letter of probate/succession certificate on payment of the requisite court fees on the amount of Rs. 9,02,000/= being the value of the properties in respect of which the letter of probate/succession certificate was sought for.

4. With the aforesaid directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

[J.N. Bhatt, Actg. C.J.]

rmr. [K.A. Puj, J.]